Supreme Court, U.S.
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No. 05-301

In The

Supreme Court of the United States

JOHN TUY PHAM,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

RANDOLPH L. SCHAFFER, JR.
Counsel of Record
1301 McKinney, Suite 3100
Houston, Texas 77010
(713) 951-9555

Counsel for Petitioner
John Tuy Pham

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the Texas Court of Criminal Appeals' decision that a juvenile has the burden to prove that illegal police conduct caused him to confess before the prosecution must prove attenuation of the taint is contrary to Supreme Court precedent.

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PETITION FOR A WRIT OF CERTIORARI

John Tuy Pham respectfully petitions for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals.

OPINIONS BELOW

The opinion of the First Court of Appeals of Texas reversing the conviction is reported at 36 S.W.3d 199 (Appendix D). The opinion of the Texas Court of Criminal Appeals vacating the judgment is reported at 72 S.W.3d 346 (Appendix C). The *en banc* opinion of the First Court of Appeals affirming the conviction on remand is reported at 125 S.W.3d 622 (Appendix B). The opinion of the Court of Criminal Appeals affirming that judgment is reported at ___ S.W.3d ___, 2005 WL 1336931 (Appendix A).

JURISDICTION

The Court of Criminal Appeals affirmed the conviction on June 8, 2005. This petition is being filed within 90 days of that decision. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a)

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides, in pertinent part, "No person . . . shall be compelled in any criminal case to be a witness against himself, nor deprived of . . . liberty . . . without due process of law. . . ."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, "No State shall . . . deprive any person of liberty . . . without due process of law. . . ."

STATEMENT OF THE CASE

A. Summary Of The Issue

The police arrested the sixteen-year-old petitioner at school to question him about a murder. He received a magistrate's warning within an hour of his arrest. He was taken to the police station, was questioned by a homicide investigator, and confessed his involvement in the shooting about an hour later. He was taken to a juvenile facility for processing. An officer from that facility notified his sister of his arrest almost four hours after he confessed. The police department notified his parents of his arrest about an hour later, more than seven hours after he was arrested and five hours after he confessed.

Petitioner moved to suppress his confession on the basis that the police lacked probable cause to arrest him and failed to comply with section 52.02(b) of the Texas Family Code, which requires a person taking a child into custody to promptly give notice of and the reason for the arrest to the child's parent, guardian, or custodian (hereafter, the "parental notification provision"). The trial court denied the motion to suppress. Petitioner's confession, which was the only evidence linking him to the crime, was admitted over objection at trial. The jury found him guilty and assessed his punishment at life imprisonment.

The First Court of Appeals reversed the conviction, holding that the confession was inadmissible because the police failed to comply with the parental notification provision. The court of appeals expressed a lack of "confidence that if appellant had access to his parents or his attorney, he would still have chosen to confess to the crime." *Pham v. State*, 36 S.W.3d 199, 205 (Tex. App. – Houston [1st Dist.] 2000). The Court of Criminal Appeals vacated the judgment and remanded for the Court of Appeals to determine whether there was a causal connection between the illegal police conduct and the confession. *Pham v. State*, 72 S.W.3d 346 (Tex. Crim. App. 2002).

The *en banc* Court of Appeals initially concluded that, in determining whether a confession was the result of illegal police conduct, it had to conduct a causal connection analysis and, if there was such a connection, then it would conduct an attenuation of the taint analysis. Observing that the issue of which party has the burden to prove a causal connection was of first impression in Texas, it held that the defendant has the burden to prove a causal connection, after which the burden shifts to the State to prove attenuation of the taint. Because petitioner failed to offer evidence regarding what his parents would have done had they been promptly notified of his arrest, he failed to prove a causal connection between the illegal police conduct and his confession. Accordingly, the court affirmed the conviction, with three justices dissenting. *Pham v. State*, 125 S.W.3d 622 (Tex. App. – Houston [1st Dist.] 2003).

The Court of Criminal Appeals granted discretionary review on the burden of proof issue. After agreeing that a causal connection analysis is distinct from an attenuation of the taint analysis, it affirmed the judgment of the court

of appeals. *Pham v. State*, ___ S.W.3d ___, 2005 WL 1336931 (Tex. Crim. App. 2005). The dissent concluded that a causal connection analysis is not distinct from an attenuation of the taint analysis under Supreme Court precedent, that a causal connection exists if the confession was obtained as a result of illegal police conduct, and that this Court requires the prosecution to prove that a confession is admissible.

The Court of Criminal Appeals' decision that a juvenile has the burden to prove that illegal police conduct caused him to confess before the prosecution must prove attenuation of the taint is contrary to this Court's precedent. This Court has never held that a causal connection analysis is distinct from an attenuation of the taint analysis, nor has it shifted the burden to the defendant to prove that he confessed as a result of the illegal police conduct. Rather, this Court has required the prosecution to prove that the illegal police conduct did not result in the confession. Accordingly, the decision below must be reversed.

B. Procedural History

Petitioner, a juvenile, was certified for prosecution as an adult for the offense of murder. He pled not guilty. A jury convicted him and assessed his punishment at life imprisonment on April 26, 1999.

The First Court of Appeals reversed the conviction in a published opinion issued on December 28, 2000. The Court of Criminal Appeals granted discretionary review, vacated the judgment, and remanded for further consideration on April 10, 2002. The *en banc* First Court of Appeals, with three justices dissenting, affirmed the conviction on November 26, 2003. The Court of Criminal

Appeals affirmed that judgment on June 8, 2005. *Pham v. State*, 36 S.W.3d 199 (Tex. App. – Houston [1st Dist.] 2000), *vacated and remanded*, 72 S.W.3d 346 (Tex. Crim. App. 2002), *aff'd on remand*, 125 S.W.3d 622 (Tex. App. – Houston [1st Dist.] 2003), *aff'd*, ___ S.W.3d ___, 2005 WL 1336931 (Tex. Crim. App. 2005).

REASONS FOR GRANTING THE PETITION

THE TEXAS COURT OF CRIMINAL APPEALS ERRED IN HOLDING THAT A JUVENILE HAS THE BURDEN TO PROVE THAT ILLEGAL POLICE CONDUCT CAUSED HIM TO CONFESS BEFORE THE PROSECUTION MUST PROVE ATTENUATION OF THE TAINT.

Petitioner was interrogated by a police officer and confessed to a murder two hours after he was arrested at school. The police did not notify his parents of the arrest until seven hours after he was arrested, in violation of a statutory provision that requires the police to promptly notify a juvenile's parent, guardian, or custodian of the fact of and the reason for the arrest. TEX. FAM. CODE § 52.02(b) (Vernon Supp. 2004). Petitioner moved to suppress his confession on the basis that the police lacked probable cause to arrest him and failed to comply with the parental notification provision. The trial court denied the motion to suppress and admitted the confession over objection. The jury found petitioner guilty and assessed his punishment at life imprisonment.

Petitioner contended on appeal that the trial court erred in admitting his confession because the police did

not comply with the parental notification provision.[1] The First Court of Appeals and the Court of Criminal Appeals agreed that the police acted illegally in failing to comply with the parental notification provision before interrogating petitioner, but they concluded that petitioner failed to prove that the illegal police conduct caused him to confess, as he failed to offer evidence regarding what his parents would have done had they been promptly notified.[2]

This Court established the attenuation doctrine in *Nardone v. United States*, 308 U.S. 338 (1939), in which it explained that, while "[s]ophisticated argument may prove a causal connection" between information obtained through illegal police conduct and the evidence sought to be suppressed, the court may determine that "[a]s a matter of good sense, . . . such connection may have become so attenuated as to dissipate the taint." *Id.* at 341. This Court implicitly recognized that an analysis of the causal connection between the illegal police conduct and the discovery of the evidence is incorporated within the attenuation of the taint analysis. Thereafter, this Court explicitly held that evidence is admissible under the attenuation doctrine only if the causal connection between the illegal police conduct and the discovery of the evidence

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[1] Appellate counsel did not challenge the probable cause for the arrest.

[2] The First Court of Appeals, in its initial opinion reversing the conviction, held that it could not conclude "with any degree of confidence that if appellant had access to his parents or his attorney, he would still have chosen to confess to the crime." *Pham*, 36 S.W.3d at 205.